

These minutes are a summary of the discussion. The audible recording is available at the following website: <http://bit.ly/T3S7CB>

Planning & Zoning Commission Meeting
Minutes of November 6, 2013
1st Floor North Conference Room - City Hall

Present: Chairman Jeremy Goldstein, Vice-Chair Holly P. Shriner, Kristy Carter, Nathaniel Cannady, Jim Edmonds, Jane Gianvito Mathews and Joe Minicozzi

Absent: None

Pre-Meeting - 4:30 p.m.

The Planning & Zoning Commission discussed the upcoming mid-month strategy meeting on November 21, 2013. They then held a brief discussion on the procedures for the items on the agenda.

Regular Meeting - 5:00 p.m.

Chairman Cannady (prior to election of new Chairman) called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

Administrative

- Ms. Shriner moved to approve the minutes of the October 2, 2013, meeting. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.
- Ms. Shriner nominated Vice-Chairman Goldstein as Chairman and Mr. Edmonds seconded the nomination. Ms. Mathews nominated Ms. Carter as Chairman and Mr. Minicozzi seconded the nomination. After the vote for Chairman, Vice-Mayor Goldstein received 5 votes (Vice-Chairman Goldstein, Ms. Carter, Mr. Cannady, Mr. Edmonds and Ms. Shriner) and Ms. Carter received 2 votes (Ms. Mathews and Mr. Minicozzi). Therefore, Vice-Chairman Goldstein was appointed as Chairman. All members of the Commission thanked Mr. Cannady for his service as Chairman over the past year.
- Mr. Minicozzi nominated Ms. Carter as Vice-Chairman and Ms. Mathews seconded the nomination. Chairman Goldstein nominated Ms. Shriner as Vice-Chairman and Mr. Edmonds seconded the nomination. After the vote for Vice-Chairman, Ms. Carter received 2 votes (Ms. Mathews and Mr. Minicozzi) and Ms. Shriner received 5 votes (Chairman Goldstein, Ms. Carter, Mr. Cannady, Mr. Edmonds and Ms. Shriner). Therefore, Ms. Shriner was appointed as Vice-Chair.

Agenda Items

- (1) **A request for a Conditional Zoning from RM-16 Residential Multi-Family High Density District to Urban Residential District/Conditional Zoning for the project identified as 291 East Chestnut Street located at 287 & 291 East Chestnut Street, to construct 16 multi-family dwelling units in two separate buildings, in addition to 4 existing units onsite, including a modification request to the setback and landscape buffer requirements. The owner is Physis, LLC and the contact is Chad Roberson, AIA. The property is identified in the Buncombe County tax records as PIN 9649-63-3056 and 9649-62-4958. Planner coordinating review – Julia Fields.**

Urban Planner Julia Fields oriented the Commission to the site location and said the project site (PINs 9649.63-3056 and 9649.52-4958) is approximately 28,281 square feet in size (.649 acre) and is located at 287 and 291 E. Chestnut Street. A two-story, four unit apartment building sits on the front of the site at 291 E. Chestnut and there is an existing accessory structure on that same property. It is proposed that the apartment building will remain but the accessory structure will be demolished. 287 E. Chestnut is vacant. Current zoning on both parcels is RM-16. The current zoning would allow for 11 dwelling units on the combined property.

The applicant is petitioning for conditional zoning of a development site containing the two properties noted above. The proposed rezoning to Urban Residential District/Conditional Zoning (URD/CZ) would create a development of 20 multi-family units in three structures on a street that contains four existing multi-family structures and the 16 unit Princess Anne Hotel.

The development site will retain one older existing four unit apartment building and the rezoning would allow for the construction of 16 additional dwelling units in two new structures (one at 287 East Chestnut and one at 291 East Chestnut). Because, the existing four dwelling unit structure would remain, the development will thus include a total of 20 dwelling units on these two properties. Four of the new units would be located in a new three-story building to be constructed to the rear (south) of the property at 291 E. Chestnut Street behind the existing four-unit structure. The other 12 units are to be in a new four story building on the vacant property at 287 E. Chestnut.

All proposed units are to have two bedrooms. The proposed height of the new three-story building is 30 feet to the ceiling of the highest occupied floor and 38'6" to the top of the roof level stairwell. The proposed height of the four-story building is 39 feet to the ceiling of the highest occupied floor and 47 feet to the top of the elevator shaft to the roof garden. The development team will seek either LEED Gold or Healthy Built Platinum certification for the new structures. In addition, the developer plans to designate the four units in the existing structure as affordable units meeting the City's standards.

URD zoning requires a front setback (build to line) of 0 to 15 feet. While the developer could have met the URD requirement with the new building, because the proposed setback is designed to be aligned with the deeper setback of existing structures along this block of E. Chestnut Street, a modification will need to be approved. The proposed setback for the new structure at 287 E. Chestnut is 16'6" on the east and 18'6" on the west so a modification (3'6" feet) to this requirement would have to be granted.

A modification is also needed for the existing structure at 291 E. Chestnut as its current front setback is 38'6" (23'6" modification). It is standard practice to request approval for the modification for existing structures.

It is worth noting that if proposed under the sustainable development projects use by right subject to special requirements provision, the proposed 20 units could be built (with some modifications to design) without rezoning. The project could meet most of the applicable standards as it is proposed to be LEED Gold or NC Healthy Built Platinum and 20% of the units are to be affordable. The project was not reviewed under this provision as the required setbacks under RM16 zoning would have been 31 feet on each side and to the rear at 287 E. Chestnut (an approximately 78 foot wide lot) for this density, less in keeping with the existing setbacks along this street. Also, for any density over four units the required side and rear yards would have been considerable. Requirements for uses by right subject to special requirements may not be varied.

Access to the site is via an existing drive at 291 E. Chestnut and a new access drive at 287 E. Chestnut. Both drives connect to the proposed parking on the sites.

Although parking is not required (Sec. 7-11-2(C)(4) of the UDO) 20 off-street parking spaces are proposed. The proposal at 287 E. Chestnut provides 12 spaces at ground level under

the structure and 8 are shown both as surface parking (7) and under structure parking (1) at 291 E. Chestnut Street.

Buffering, street trees, parking lot landscaping, and building impact landscaping are required. Modification requests to the 20 foot buffer required where the property abuts RM16 zoning are as follows:

- 13 foot modification on the eastern property line of 291 E. Chestnut (7' to 10'3" buffer provided).
- 20 foot modification on the western property line of 291 E. Chestnut (no buffer provided due to existing/improved driveway).
- 20 foot modification for a portion of the northern property line of 291 E. Chestnut (none provided).
- 8 foot modifications for both the western and eastern property lines at 287 E. Chestnut (12 feet provided).

The proposed open space area exceeds the 4,242 square feet required, with 4,784 square feet shown.

The developer met twice with interested parties from the neighborhood (3/20/13 and 4/2/13). Concerns were voiced about the design and size of the proposed new structures (particularly the 12 unit building). In response to comments the development team has made a number of changes to the proposal. Included in the amendments are: the creation of a community space in the front of the new building; a better defined pedestrian opening/walkway found at the center of the building; the addition of balconies on the top floor of the building facing toward E. Chestnut; and, design changes which break up the scale of the front façade of the building by eliminating the parapet in the front and providing relief by recessing portions of the building. Additionally, the building has been dropped down one foot and the building designed so as to hide the parking from the street.

A memorandum has been received from the Chair of the Historic Resources Commission of Asheville and Buncombe County asking that the requested buffer modification on the west side of the property at 287 E. Chestnut not be granted. The property line abuts a local historic landmark, the Patton/Parker Home and the requested buffer would put the structure at 130 feet from the historic structure rather than 138 feet.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project, if approved, must meet all technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications manual. The developer has made a number of corrections to the plans addressing many of the TRC conditions. The corrected plans have been distributed to the Planning and Zoning Commission.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
There exist no significant natural or topographic features on the site to mitigate.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

There are a number of other multi-family dwellings along East Chestnut Street of varying densities. The property abuts other properties zoned for multi-family use or for commercial or office use and is in a highly desirable area for higher density dwelling units. As a result, the development of higher density housing should not injure the value of adjoining or abutting property. The nearby existing structures include a two story "garden apartment" complex consisting of 57 units, the three to four story Princess Anne Hotel (16 units), and another three story apartment structure. The property abuts (to the west) a local historic landmark property, used in the past as a single-family residence. It is also in a National Register Historic District – Chestnut Hill.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The proposed density for the development is 30.8 units per acre. In the immediate area are other multi-family dwellings ranging from 28.2 to 18 units per acre. There is no definable architectural style along that block of E. Chestnut Street. The bulk and site coverage are different from some, but not all, other properties found close by.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The proposed development supports a number of City of Asheville goals and strategies including: Providing affordable housing meeting the City's standards; Promoting high density infill development near or along major corridors and transit routes; and Supporting green building.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located less than a block from a major City street and transit route. Infrastructure and services are available to serve the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Because the development is small (16 additional units) the traffic created should not be substantial. Parking, while not required is provided.

Pros:

- The project offers affordable units, aligning with City Council's goals.
- The proposed development provides housing in a transit-served area.
- Higher density infill development furthers the goals and objectives of the comprehensive plan.
- The project is being designed to meet LEED Gold or NC Healthy Built Homes Platinum standards.
- Supports URD purpose of "providing an improved diversity of housing types, scale, affordability, and character in areas where they can best be served by city services and infrastructure."

Con:

- The proposed structures are of greater bulk and site coverage than what is found on some other properties in the immediate area.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable. While the bulk and site coverage of the building are different from what is found on some properties in the immediate area, Council's goals call for increased affordable

housing, infill development and greater density particularly in areas such as this one - close to transit and Downtown Asheville. The developer has made a number of design changes following meetings with the neighborhood.

In response to Mr. Edmonds, Ms. Fields felt that the biggest concern is the buffer modification request on the west side of the property in that it would put the structure 130 feet from the historic structure rather than 138 feet. The developer is offering 12 feet which would contain all the plantings, just not the width. He has also offered to extend the additional 8-foot landscaping buffer onto the Parker-Patton House at their expense.

Mr. Chad Roberson, developer and architect, explained why they were seeking a zoning change since they can pretty much do what they're doing with the current zoning, however, there are a number of contradictions in the UDO preventing them from meeting three main criteria - density, sustainability and the affordability component. He then explained the modification requests to the landscape buffers. Their proposal is not out of character for this neighborhood as currently there is over 110 units available within the block. The development pattern for the neighborhood is high density multi-family. He then described the different proposals they looked at for the site and arrived at this project which is the best project for the neighborhood and the City.

Mr. Richard Fort, architect and partner in the project, felt that the project does compliment the existing neighborhood scale, character and density. He showed a massing diagram of what could be built in the neighborhood under the current UDO. The massing of their project fits the traditional development patterns of the neighborhood. They do not feel that their proximity to the Patton-Parker House is a liability because it is 130 feet away. Their project will include 20% affordable housing less than one mile from the downtown employment center. They will provide off-street parking and take advantage of existing utilities and services by the City. They are 1/2 block from a significant transit corridor.

There was considerable discussion by the Commission regarding the various modification requests, the surface and under building parking; and density of the surrounding structures.

When Ms. Mathews asked if the developer could have requested RM-16/Conditional Zoning with modifications for setbacks; Director of Development Services Shannon Tuch replied yes.

In response to Ms. Mathews, Mr. Roberson talked about the roof garden, their checklist for LEED features, and how the mechanical system would be screened.

In response to Mr. Minicozzi, Mr. Roberson described the front of the building and their exploration into dropping the under structure parking down.

In response to Ms. Mathews, Mr. Roberson said that he would be happy to provide the calculations for the openings on the west façade.

At 5:55 p.m., Chairman Goldstein opened the public hearing.

The following individuals spoke in opposition of the project for various reasons, some being, but are not limited to: concern about only one parking space per 2-bedroom unit on a street where parking is already difficult; there is no continuity of this project with the neighborhood; encourage development on the site, but only with the existing zoning classification in place; suggestion for developers to provide scaled models of project for easier understandability; concern of adverse pedestrian level impact for the under structure parking; project does not fit into the historic nature of the neighborhood; setting a precedent if we allow parking in a residential neighborhood under buildings; façade is incongruent with the buildings

around it; the project is really a multi-level facility with ground level parking which is inconsistent with any neighborhood; and question of why the property was considered as one property:

Ms. Dawn Nelson, resident in the Ansonia Apartments

Resident on Furman Avenue

Mr. Jack W.L. Thomson, Executive Director of the Preservation Society of Asheville-Buncombe County

Mr. Dean Fitzpatrick, property owner on E. Chestnut Street

Mr. Mark DeVerges, resident on Baird Street

Ms. Janet Hart, President of the Charlotte Street Neighborhood Association
Neighborhood resident

Mr. Karl Katterjohn

Ms. Nettie White, resident on Furman Avenue

Mr. Dale Slosser, member of the Preservation Society of Asheville-Buncombe County

Ms. Leslie Klingner, area resident

At 6:20 p.m., Chairman Goldstein closed the public hearing.

In response to Chairman Goldstein, Ms. Fields said that there is no review by right of the underlying zoning for architectural design. Design requirements can be made a part of the conditional zoning, but they would have to be agreed to by the developer.

Ms. Mathews noted that the City has very limited Urban Residential District zoning. Ms. Fields felt that just because it has not been applied much doesn't mean that the application is right or wrong for different areas.

Chairman Goldstein felt there was a conflict of the goals. On one hand the Commission is charged with supporting the City's goals of providing affordable housing, promoting infill development, supporting green building, etc. On the other hand he hears that the neighborhood does not want that kind of density. Regarding design, he didn't think the Commission should be trying to tell people how to design their buildings.

Ms. Mathews felt we should look at the purpose of the Urban Residential District, which talks about complimenting the existing neighborhood. There are a lot of references in the 2025 Comprehensive Plan that add definition to some of the City's goals and helps in the Commission's decision-making.

Mr. Edmonds said that most of the area seems to be multi-family or business property. He felt that if they keep the existing zoning, they can build a far-less desirable project, with no off-street parking or buffering. He felt that the proposed project is far better with a few modifications.

Ms. Fields responded to Ms. Carter when she asked about how the affordability of the four units would be maintained.

Ms. Fields responded to Ms. Mathews when she asked about two other criteria under the Urban Residential District - building templates and how the buildings fit with those building templates; and how the entrances shall include a well-defined operable entrance at regular intervals for the 4-unit building.

Mr. Cannady felt the under structure parking is a plus to the project because it gets cars off the street. He felt the project offered is reasonable compared to what they could build.

Ms. Mathews felt the Urban Resident District purpose was geared towards truly urban areas that are more conducive to a variety of development and not to an established neighborhood. She felt the application of this District is precedent setting that goes against the

2025 Comprehensive Plan and is not intended for this type of off corridor middle-of-neighborhood use.

Vice-Chair Shriner agreed with Ms. Mathews that the URD/CZ is not applicable for this location. She had no problem with the density, but she felt there are a lot of things the developer could do without having to change the zoning. She felt that two biggest concerns were the concrete parking structure from a pedestrian level standpoint and the design standards, understanding the pictures shown are only a direction at this stage. She hoped the developer can work with the neighborhood to find a more aesthetically pleasing building than what they have shown so far.

Ms. Mathews felt the Commission should revisit the no parking requirements in the Central Business District.

Ms. Carter felt there are a lot of good things about the project, like increased density, LEED certification, affordable units, infill, along a transit line, some danger about what could be built on the property, and buffer on the west side by the Patton-Parker House. Her overall concern is that the project is not in harmony with the neighborhood. She also expressed concern about the closeness of the 4-unit apartment to the garage. She too agreed with Ms. Mathews regarding the URD/CZ not being applicable for this location.

Mr. Minicozzi didn't have a problem with the increased density on the site. However, ultimately the massing of the parking is not in harmony with the rest of the buildings on the street.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Chairman Goldstein moved to recommend approval of the conditional zoning of the project located at 291 East Chestnut Street, located at 287 and 291 East Chestnut Street, from RM-16 Residential Multi-Family High Density District to Urban Residential District/Conditional Zoning, with approval of modifications to the setback and landscape buffer requirements, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Mr. Edmonds.

Vice-Chair Shriner asked for a friendly amendment that the developer increase the width of the landscape buffer on the west side if the property owner is agreeable. Mr. Roberson said that he would agree to that condition.

Chairman Goldstein and Mr. Edmonds agreed to the friendly amendment.

The amended motion carried on a 4-3 vote, with Chairman Goldstein, Vice-Chair Shriner, Mr. Cannady and Mr. Edmonds voting "yes" and Ms. Carter, Ms. Mathews and Mr. Minicozzi voting "no."

At 6:55 p.m. Chairman Goldstein announced a short recess.

- (2) **A request for a Conditional Zoning from Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Zoning on 12.33 acres on Sweeten**

Creek Road for a project known as The Avalon, to facilitate the development of 8 multi-family buildings and 1 clubhouse building containing 192 residential units. The owner is Triangle Real Estate Gastonia, Inc. The project contact is G. Thomas Jones III. The property is identified in the Buncombe County tax records as PIN 9654-33-5493. Planner coordinating review – Jessica Bernstein

Urban Planner Jessica Bernstein oriented the Commission to the site and said that the applicant is requesting review of a conditional zoning request from Industrial to Residential Multi-family High Density (RM-16), in accordance with Section 7-7-8 of the UDO, for the construction of a multi-family apartment complex.

The site consists of a 12.33-acre parcel located on Sweeten Creek Road in South Asheville. The parcel is currently zoned Industrial (IND) and is vacant. The site is bordered by the Norfolk-Southern Railroad to the west; Institutional zoning to the east (nursing home); Commercial Industrial (CI) zoning to the north (a mix of manufacturing operations, warehousing and associated offices in an industrial park) and Commercial Industrial (CI) zoning to the south (warehousing and storage uses).

The proposal is to develop a multi-family apartment complex with a total of 192 units. Plans propose a mix of 1-bedroom (48 units), 2-bedroom (120 units) and 3-bedroom (24 units) configurations. There are 8 residential buildings shown on the site, with a maximum building height of 36 feet (all three-stories). Additional structures proposed include a single-story clubhouse building located at the entrance to the development and three 1-story garages within the site.

Vehicles will access the site from two driveway cuts, both off of Sweeten Creek Road, with the primary entrance placed next to the clubhouse at the northern end of the parcel.

There are 312 parking spaces shown on plans, both along the 26 foot wide two-way private drives and in small parking lots throughout the site. This parking count includes 11 HC-accessible spaces dispersed throughout the site, a small parking area on pervious pavers and three six-car covered garages. Also, 16 bike parking spaces are distributed among the buildings.

Sweeten Creek Road is identified as a "needed linkage" for sidewalks but none are shown along this frontage due to anticipated road widening in the near future by the North Carolina Department of Transportation. Pedestrian pathways are shown interior to the site and would connect to any future sidewalk.

Landscaping is required for this project and includes street trees, parking lot landscaping, building impact landscaping and tree save area. The applicant is proposing to preserve existing vegetation around the north, west and southern perimeters of the site and to apply those as credits for some of the required landscaping.

Open space is also required for this project, at a rate of 500 square feet per unit, which will result in a total of 2.20 acres for the site.

Under the current Industrial zoning, residential is not a permitted use. As is noted above, the requested rezoning is not consistent with a Comprehensive Plan policy stating that Industrially-zoned land should be preserved for industrial uses. However, there are multiple recent precedents for City Council approval of similar zoning changes. At the August 2009 meeting of the Planning and Economic Development Committee, City staff discussed these cases, and reviewed the practice of considering each such rezoning petition on a case-by-case basis, under close consultation with the Office of Economic Development.

Staff consulted with the Economic Development Coalition (EDC) who shared staff's concern that industrially-zoned land should be preserved for industrial uses and requests

examined on a case-by-case basis. In this particular case, the group did not feel strongly enough to formally oppose the rezoning.

The following provides a list of several examples where the City has approved rezoning applications eliminating Industrial sites:

- In October 2005, City Council approved a rezoning of roughly 31 acres off of Dogwood Road in Candler from Industrial to RS4.
- In May 2006, a rezoning of approximately 1.5 acres of land at 1301 Sand Hill Road was rezoned from Industrial to Community Business II.
- In July 2007, City Council approved a rezoning of approximately 37 acres from Industrial to RM16 for an area on the eastern edge of the Biltmore Lake community.
- In October 2010, City Council approved a rezoning from Industrial to Airport, a district allowing fewer industrial uses.
- In January 2011, 13 acres off Orchard Street were rezoned from IND to RM6.
- In February 2013, the Possum Trot rezoning changed 1.3 acres from CI to RM8.

This project was approved with conditions by the Technical Review Committee on October 7, 2013. No communication from the public has been received.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

This site has been previously graded and is mostly flat with areas of existing vegetation around the north, south and west property lines. The proposed development of the land is compatible with these features in that the buildings and parking areas are focused in the center of the site and areas around the perimeter incorporate and retain landscaping materials for required bufferyards.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed use and development of the land is not expected to injure the value of abutting property. Although the parcels immediately adjacent to the north and south are industrial and warehousing uses, the required landscape buffers should provide adequate visual separation. As noted below, there are numerous other residential developments in the immediate vicinity.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The subject area has a variety of zoning districts and uses. The parcels directly adjacent to the north and south are manufacturing/storage/warehousing uses and this proposed development can be said to be inharmonious with those uses. However, there are instances throughout the City where these uses are adjacent to one another. Additionally, there are a number of residential developments existing in the immediate vicinity, just on the other side of those parcels and across the street to the east (Holiday Drive – zoned CI, Carrington Place and Pigeon Lane – both zoned RM-16), and this use is very similar to those in scale, bulk, coverage, density and character. The “area or neighborhood in which it is located” is not entirely straightforward in this situation.

City-adopted goals indicate the need to preserve industrially-zoned land for industrial and manufacturing uses and there is some question as to whether a residential use is in harmony with the uses permitted on those neighboring sites. However, as previously stated, there are multiple residential uses in the immediate vicinity (the three mentioned above are within 0.4 miles) as well as a very large residential presence in the general area (as shown on the Exhibit C map). There are several sizable under-developed parcels across Sweeten Creek Road to the east that are either residentially zoned already or Institutional, which permits residential uses. So it seems that while the proposed use may be out of character with the uses immediately to the north and south, the multi-family residential development is similar in scale, bulk, coverage, density and character to a number of other like developments in very close proximity.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Elements of the project align with the City's goals and objectives including siting development in an infill location, proposing a density that supports transit and offering rentals as a “workforce” rate. However, multiple plans caution eliminating Industrially-zoned land, which this proposal does.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The site is located in an area accessible by vehicle. The nearest transit route is the S3 at Hendersonville and Buck Shoals Road (approximately 0.5 miles). Adequate water supply, police protection, waste disposal and similar facilities are verified during the TRC review process.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The Traffic Impact Study for the Avalon has been reviewed. Based on the findings and presuming that the recommendations presented by the report are implemented, the proposed use should not cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Existing vegetation around the perimeter of the site will be preserved.
- Project incorporates pervious pavers into one of the parking areas.

- Proposes a density that supports transit (S3 on Hendersonville Road is within 0.5 miles and the S1 ends 5 miles north)

Cons:

- Application does not propose to dedicate any units for affordable housing (*although none is required*) – however, the applicant has been directed to the Community Development Department to discuss possibilities.
- The Comprehensive Plan, as well as the Sustainable Economic Development Strategic Plan, includes a stated policy to preserve Industrially-zoned land for industrial uses.

Based on policies stated in the Comprehensive Plan and other plans, staff notes concerns about eliminating Industrially-zoned land. However, both the Planning and Zoning Commission and City Council have supported similar rezoning actions in the recent past and the EDC did not oppose the proposal when consulted. If the Commission wishes to consider this rezoning independent of the existing policies, staff feels a case can be made for recommending approval based on the proliferation of residential uses in the near vicinity, subject to the conditions recommended by staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation.

Mr. William Ratchford, Vice-President of Triangle Realty, said that his company is family owned, and they are constructing another another project in Asheville - The Palisades. They are based in Gastonia, N.C., and consider themselves a regional company with regional interests. The project will have a full-time staff of 4 and 2 part-time. They are long-time holders, managers and operators of the property. They have kept all their projects they have built, except for one. They have built over 4500 in five states.

In response to Chairman Goldstein, Mr. Ratchford said they have owned the property since last fall. Prior to that, it was owned by Mr. Carr Swicegood who had cleared it about 10 years ago for the road project. They have been trying to market it since.

When Ms. Mathews asked about the affordability and sustainable issues, Mr. Ratchford said they are market rate owners. They feel that Asheville does have affordability problems but not just for low income, but throughout the entire group of rental housing. They should open up 224 units with The Palisades next summer. If this project is approved they will add another 416 units to a supply market that will help reduce rents. Their workforce housing rates are for a one-bedroom - \$800-850; a two-bedroom - \$925-995; and a three-bedroom - \$1150-1225.

Mr. Minicozzi was concerned about losing commercial industrial real estate. We have 648 acres left of it and, if approved, this is another 12 acres taken off. If there is a lack of residential zoning, then we need to start converting other uses. If this moves forward, he would like to see City Council modify the 2025 Comprehensive Plan. He felt that if we have a policy to retain commercial industrial property, then we need to abide by that.

Mr. G. Thomas Jones, civil and site engineer, talked about the details of the property. The property is really 10 acres because they can't put buildings in the 2 acre railroad right-of-way. He then talked about the adjacent land uses and the neighborhood. He felt that this property has been vacant for 10 years is because industrial projects that create a lot of jobs typically require more land than 10 acres. Another challenge for industrial is that the site has an elevation difference of 58 feet from the highest point on Sweeten Creek Road to the lower corner of the property.

At 7:36 p.m., Chairman Goldstein opened the public hearing.

Mr. Mike Plemmons, representing the Council of Business Owners, agreed that we need to keep industrial sites in the hopes that the City can attract more industry, but with all the rules and regulations, it is hard to do. This project looks like a good development.

At 7:37 p.m., Chairman Goldstein closed the public hearing.

Mr. Cannady understands that we need to preserve industrial property, but if a person owns a piece of property, the City should not encumber their right to sell it because they want to preserve it.

Chairman Goldstein felt that the current property owner bought the property knowing what it was zoned. That is a risk they were willing to take. He was conflicted because City Council is saying we want to save industrial land, but he wondered if this piece of property really fit that use.

Ms. Mathews looks like there was some input from the City Council Planning & Economic Development Committee not objecting to this. Since it doesn't look like any industrial use will be on that property, Council may feel that it's better for the City to get some tax value from a development that provides another need in the community.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Vice-Chair Shriner moved to recommend approval of the conditional zoning of the project known as The Avalon located on Sweeten Creek Road, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Mr. Cannady and carried on a 6-1 vote, with Mr. Minicozzi voting "no."

- (3) **A request for a Conditional Zoning from RS-4 Residential Single-Family Medium Density District to RS-8 Residential Single-Family High Density District/ Conditional Zoning on 2.12 acres located on Taft Avenue, to facilitate the development of a single-family residential community composed of 10 lots and 10 detached single-family dwellings. The request carries a request for a modification of the City's standards related to right-of-way and lot size. The property is being developed by Asheville Area Habitat for Humanity and the project contact is Keith Levi. The property is identified as PINs 9657-02-1055, 9657-02-1322 and 9647-92-9006. Planner coordinating review: Julia Fields**

Urban Planner Julia Fields oriented the Commission to the site and said that the project site (currently three separate parcels) is approximately 3.34 acres in size and is located off of Taft Avenue in the Shiloh community. The current zoning of the property is RS4. The property is traversed by a stream and sewer line presenting challenges to development. A 30 foot platted right-of-way abuts the parcels.

Asheville Area Habitat for Humanity proposes to create a ten-lot subdivision utilizing a previously platted right-of-way to create a new street, McKinley Avenue, on which the lots in the subdivision will be located. All homes to be constructed will meet affordable standards.

Due to property constraints and a desire to create as many affordable home lots as possible, they are requesting a rezoning to RS8CZ. The rezoning will allow smaller lot sizes, but due to site constraints it will not result in an increase in density. The resulting density will be less

than what would be permitted under the current zoning (around 14 lots) because much of the property must remain undisturbed due to the location of streams and a sewer line on the property. In an effort to work with an adjoining property owner the developer is requesting a modification of lot size for Lot #1. The modification is 382 square feet; the resulting lot will be 4,618 square feet in size.

Access to all lots will be via a new roadway, McKinley Avenue that is proposed to be 24 feet wide with a right-of-way varying from 30 to 40 feet. City standards require 22 feet of pavement with a 50 foot right-of-way. The applicant is requesting a modification of the right-of-way standard (20, 15 and 10 foot modifications). No sidewalk is proposed as the development will not generate the vehicular traffic to warrant a sidewalk per city standards.

Street trees and significant tree save area are shown. Open space exceeding the required 20% (63.5%) is proposed.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposal has been reviewed by the City of Asheville Technical Review Committee and meets, or can meet all applicable regulations with the exception of the right-of-way and the size of Lot #1. Staff is supportive of these modifications as they result from existing conditions on the property and an effort to assist an adjoining property owner.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The use is compatible with the significant challenges presented on site due to a stream/floodplain. The proposed development leaves this sensitive portion of the property primarily as open space and tree save area.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The proposed use should not injure the value of adjoining properties. It abuts a single-family community and a shopping center.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

All but two of the RS4 properties in the immediate area are less than 10,000 square feet in size (the RS4 standard). Most of these lots are 5,000 to 7,000 square feet in size. The developer plans to build traditional single-family homes on the lots which is in keeping with the adjacent community.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

This project supports several goals found in the City's comprehensive plan including goals concerning infill development and affordable housing. The area where this development is proposed was specifically encouraged as an infill possibility in the Shiloh Community Plan adopted in 2010.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed subdivision is located in an established community and will have all appropriate facilities provided. Additionally, it is located in close proximity to a community center.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

There are only ten single family home lots proposed in the development.

Pro:

- The development provides ten new affordable single-family home lots.
- The development meets City goals concerning infill and the provision of affordable housing.
- The development abuts an established community of single-family homes.

Con:

- None noted.

Based on the above finding and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of the conditional zoning request with a lot size modification for Lot #1 of 382 square feet and a right-of-way modification ranging from ten to twenty feet in size, and subject to the conditions recommended by staff and all standard conditions and with the conditions set forth in the TRC report.

Mr. Will Buie, with Lapsley & Associates Engineering, explained the compatibility with the neighborhood and feel that this is serving a need in the community.

At 7:47 p.m., Chairman Goldstein opened the public hearing.

Mr. Marvin Johnson, representing his parents who live at 34 Taft Avenue, asked several questions (which Mr. Buie responded) regarding the right-of-way, the amount of property for the project, and if the project will affect their tax base. Mr. Buie also provided Mr. Johnson with his business card, noting that he would let his parents know when the grading starts.

At 7:58 p.m., Chairman Goldstein closed the public hearing.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Mr. Cannady moved to recommend approval of the conditional zoning of 2.12 acres on Taft Avenue, with a lot size modification for Lot #1 of 382 square feet and a right-of-way modification ranging from ten to twenty feet in size, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.

- (4) **A request for a Level III review for the construction of new facilities for the Asheville Middle School on 25.97 acres located at 197 South French Broad Avenue, to facilitate construction of a 3-story 174,695 square foot school. The property is owned by the Asheville City Board of Education and the project contact is Chris Day. The property is identified as PIN 9648-17-2323. Planner coordinating review: Jessica Bernstein.**

Urban Planner Jessica Bernstein oriented the Commission to the site and said that the applicant is requesting review of site plans for the construction of new facilities for the Asheville Middle School. This project is considered a Level III review pursuant to Section 7-5-9(a) of the UDO which designates review for institutional uses of over 100,000 square feet. Level III projects are reviewed as Conditional Use Permits in the Institutional District and schools are reviewed as a Use By Right, Subject to Special Requirements in residential districts.

The site consists of a 25.97 acre parcel located at 197 South French Broad Street. The parcel is split-zoned Institutional and RM-8 and is currently the location of the Asheville Middle School. The site is bordered by CI to the west, Office and RS-8 to the east, Institutional (YWCA) and RM-8 to the north and CI and RS-8 to the south.

The proposal is to demolish the existing school building and construct a new facility with upgraded site improvements (students will remain in the existing building until the new facility is complete). Plans show a 3-story (48 feet in height), 174,695 square foot building with 67 classrooms, located towards the southern end of the site and parking and open space towards the northern end. Existing uses on the rear end of the site are not expected to change (track, football/soccer field, baseball diamond, open space).

Plans show access into the site by vehicles from five locations. One access point is via Charles Street which is proposed to become one-way (into the site) south of Timothy Street. The other four access points are all along South French Broad Avenue, starting at the northern end with an entrance-only, two-lane loop that provides a drop-off in front of the school building and access to the parking lot, connecting back to the roadway as an exit-only opening to complete the loop. The third and fourth driveways provide a second "loop", for bus drop-off and access to the bus parking.

There are two surface parking areas proposed with this project. The first is towards the front of the building and includes 106 spaces. The second parking area is to the side of the building and provides bus parking (six spaces) and an additional 28 car spaces. There are a total of 134 car spaces shown on the site. Bicycle parking is required and provided.

Ten foot wide sidewalks are provided along the entire frontage of the property along South French Broad Avenue and a six foot sidewalk will be included along Charles Street. There is one pedestrian route shown into the site from South French Broad, at the southernmost driveway entrance (10 feet, back of curb) and another from Charles Street (six feet wide). There are draft plans for the Clingman Forest Greenway segment, which will travel through the northern end of the site, and potential connections into the site are under discussion. Details on the greenway segment are not yet formalized.

Landscaping is required for this project and includes street trees, parking lot landscaping, building impact landscaping and property line buffer in two locations. There is significant existing vegetation on the site that is proposed to remain, primarily along the rear of the site by the sports fields.

Fifteen percent of the total lot area is required to be dedicated as open space, which would be 3.89 acres for this site. Significantly more than the minimum is provided, with 9.64 acres designated on the plans and more area left open on the site but not included in the calculation.

This proposal was approved with conditions by the Technical Review Committee on October 21, 2013, and requires review by City Council and Final TRC prior to zoning approval. No public comment has been received.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The proposed use and development of the land is compatible with the natural and topographic features on the site in that the area intended for construction of the new middle school facility is previously graded (where the old baseball field and basketball courts are currently located) and the new parking area will be on the previous school site. The bulk of the project area will remain unchanged. The area for construction is flat and where there are a few locations around the perimeter of the project area with topographic challenge, they will be appropriately managed with retaining walls.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The parcel containing the Asheville Middle School is quite large (over 25 acres) and the school use has long been established in this location. Schools are a complementary use to have in proximity to residential neighborhoods and should enhance the value of these abutting properties. The adjacent YWCA and small offices in residential conversions are also compatible with this type of development and are not expected to see a decline in value.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The new Middle School will be located towards the previously developed southeastern end of this large parcel. As mentioned in #3, this is an appropriate location for an educational use and this use has been established on the site for some time. The new school building is approximately 40,000 square feet larger and one-story taller than the existing building.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Elements of the project are directly aligned with the City's goals and objectives including infill development, investment in the public school system, enhancement of the residential community and supporting a high quality of life for Asheville residents. The project is also aligned with separate Clingman Forest Greenway discussions occurring separately.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

This proposed development is located near major road facilities and interstate connections. In addition, the project has been reviewed by the Technical Review Committee who found that existing infrastructure appears adequate and preliminary review has not revealed any problems for future service to the development. The site is located along the S4 transit route and the proposed Clingman Forest Greenway is adjacent to the site.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

There was no TIS required for this project. The traffic control plans for the project have been reviewed. Based on the plans that were presented, the proposed use should not cause undue traffic congestion or create a traffic hazard. The proposed configuration on the AMS campus should be a positive change to traffic congestion issues along South French Broad Avenue.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposal provides an upgraded facility for Asheville Middle School students and families.
- Reconfigured drop-off and pick-up loops for automobile and school bus traffic should streamline vehicular access to the site.
- The proposed Clingman Forest Greenway should be near or through the northern part of this site, providing potential connections to the school campus.

Con:

- Not currently proposing LEED-certification (as has been included in several recent Asheville City school projects).

Staff recommends supporting the requested Level III project (Conditional Use Permit) to support this development proposal, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The applicant will continue to work closely with City staff to provide connections into the site, where feasible and appropriate, from the proposed Clingman Forest Greenway. The upgraded school facility will be a benefit to many local students and residents and investment in education is well supported by City goals and objectives.

Mr. Chris Day, with Civil Design Concepts, said that the reconfigured drop-off and pick-up loops for automobile and school bus traffic will streamline vehicular access to the site. To be able to redevelop on site is smart growth and being able to implement new stormwater measures for water quality is a great improvement. There is no intended vehicular access on Vernell Avenue, but they are looking to bring a sewer connection onto Vernell Avenue. They are not committing to LEED because of budget constraints.

In response to Ms. Mathews, Mr. Day said that they are implementing significant stormwater management that currently exists at the back of the property now,

When Mr. Minicozzi suggested the developer talk with RiverLink about possible remediation funds from Clean Water Management Trust Fund. Mr. Day said that the reality of the timeframe may make it difficult.

At 8:10 p.m., Chairman Goldstein opened the public hearing.

Ms. Marion Patton, resident on South French Broad Avenue, said that she and her neighbor did not receive the notice of this hearing. She asked that the developer meet with the neighborhood to describe the project in more detail, which Mr. Day said that he would be happy to do. In addition, at Ms. Patton's request, Mr. Day explained about the sewer line they would be hooking onto on Vernelle Avenue.

Mr. Mike Plemmons, representing the Council of Independent Business Owners, said they have followed this project since it was brought up by County Commissioner Jones at the County Commissioner's meeting. This project is coming out of County funds and he hoped that the Planning & Zoning Commission would recommend approval because they need a new school. He said they were proud to endorse this project.

At 8:17 p.m., Chairman Goldstein closed the public hearing.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Mathews moved to recommend approval of the conditional use permit for Asheville Middle School, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) The applicant will continue to work closely with City staff to provide connections into the site, where feasible and appropriate, from the proposed Clingman Forest Greenway. This motion was seconded by Mr. Minicozzi and carried unanimously by a 7-0 vote.

At 8:18 p.m., Chairman Goldstein announced a short recess.

(5) Caledonia Road Rezoning

Planning & Development Director Judy Daniel said that due to the similarity of the following three rezonings, she would present them in total. Chairman Goldstein said that one combined public hearing would be held on all three rezonings, but that three individual motions would be required.

Proposal to rezone properties on Caledonia Road from Institutional District to RM-16 Residential Multi-Family High Density District. The owners are Kenilworth Apartments, LLC and Caledonia Development LLC; and the petitioner is the City of Asheville. The property is identified as PINs 9648-72-2062 and 9648-71-4812. Planner coordinating review – Judy Daniel

Planning & Development Director Judy Daniel oriented the Commission to the site and said that on September 10, 2013, staff presented a Council requested zoning analysis of the properties that are the subject of this rezoning proposal (and others in the vicinity). After the presentation the Council voted to direct staff to pursue a rezoning of these properties, and to contact the owner of these properties to request that he consider a rezoning of the adjacent property with the Institutional Conditional Zoning to an RM-16 Conditional Zoning. This report proposes a rezoning from Institutional to RM-16 for the Kenilworth Inn property (PIN:9648722062 / 5.81 acres) and a small adjoining property owned by Caledonia Development LLC (PIN:9648714812 / .61 acre).

As noted in prior reports to Council, the staff believes that Institutional is not appropriate zoning for any of these properties. Regardless of any other considerations, the Institutional Zone allows a wide range of non-residential uses, many of which could be inappropriate at this location due to access and compatibility issues. The Institutional Zone is a relic of a time when the Kenilworth Inn operated as a medical facility. When comprehensive rezoning was implemented in this area in 1980 a zone was chosen to reflect the existing use on the property (a common practice at the time) rather than appropriate zoning for future potential uses taking into consideration the steepness of residual parts of the property. Later, when the structure was renovated and turned from a medical facility into apartments no rezoning was required as multi-family housing is a use allowed in the Institutional zone. Further, there does not seem to have been any thought at that time that the remaining properties (primarily steep wooded slopes) owned by Caledonia LLC might later be proposed for additional development.

The proposed change to the RM-16 district for the Kenilworth Inn Apartments and the small (.61 acre) property adjoining it that fronts on Caledonia Road) would retain the existing residential density potential, so the Kenilworth Inn would remain a conforming use, but would eliminate the potential for a range of nonresidential uses allowed in the Institutional zone that the staff believes could be problematic at this location. Any reduced density zone for the Kenilworth Inn property would render the property non-compliant for density, so that was not considered.

It should be noted that the small (.61 acre) property just to the south of the Kenilworth Inn property, does have some limited development potential; as the Inn property is large enough to support the 16 dwelling units per acre density alone. Although, the 2010 subdivision plat creating this separate property has a note indicating intent to recombine it with the larger Kenilworth Inn property.

As of this writing, staff has received no communications from the property owner or the public regarding the proposed rezoning.

Pros:

- The change is suitable for the subject area and consistent with other adjacent and nearby land uses.
- The change meets a smart-growth goal of the comprehensive plan better than the current zoning.

Con:

- The zoning change was not requested by the property owner.

Staff's analysis indicates that the proposed zoning district would support appropriate development, and prevent incompatible development better than the existing zoning, and, accordingly, staff finds the proposal to be reasonable and recommends approval.

Proposal to rezone properties located on Caledonia Road from Institutional District to RS-8 Residential Single-Family High Density District. The owners are Caledonia Development LLC, Riverlink Inc, and Arthur Trupp/Nancy Headley; and the petitioner is the City of Asheville. The properties are identified as PINs 9648-71-

**4686, 9648-72-6180, 9648-71-8648, 9648-71-8624 and a portion of PIN 9648-72-7364.
Planner coordinating review - Judy Daniel**

Planning & Development Director Judy Daniel oriented the Commission to the site and said that on September 10 of this year, staff presented a Council-requested zoning analysis of the properties that are the subject of this rezoning proposal (and others). After the presentation the Council voted to direct staff to pursue a rezoning of these properties. This report is the request for rezoning on five properties from the Institutional zoning district to the RS-8 zoning district.

This proposed rezoning to RS-8 will affect three properties owned by Caledonia Development LLC, the one property owned by Riverlink Inc., and a portion of one property that is currently split zoned between Institutional and RS-8. All of these properties have substantially steep topography. The 3.24 acre property to the east of the Kenilworth Inn property bifurcated by Caledonia Road (PIN: 9648726180) and the 3.36 acre Riverlink property (PIN: 9658714686) take access from a steep and winding segment of Caledonia Road. The two small recently created lots (PINs: 9648718624, and 9648718648) owned by Caledonia Development LLC (.16 acre each), take access from the lower portion of Caledonia Road, and the proposed zoning replicates recently requested and approved zoning for the other four small lots created along this road segment. All affected property owners have been notified of this pending action and to date staff has received no communications from them regarding the proposed rezoning.

These changes would substantially impact development potential of the larger properties, reducing the potential density by approximately 50%, but would bring the development potential closer to an appropriate level given the location, topography, other limiting site conditions, and current community expectations. The 3.24 acre property has an average slope of 35%, and the 3.36 acre property has an average slope of 44%.

The small lot located in the lower curve of Caledonia Road (PIN 9648727364) is included in this zoning action because it is split between Institutional and RS-8 zoning; and in the context of a general zoning evaluation of this area, staff believes this situation should be resolved. A single family home was built on the property (owned by Arthur Trupp and Nancy Headley) within the past few years, so a rezoning to single family zoning for the portion zoned Institutional (.34 acre) is appropriate. The owners have been notified, and as of the date of this report they have not responded regarding the proposed rezoning.

As of this writing, staff has received no communications from the public regarding this action.

Pros:

- The change is suitable for the subject area and consistent with other adjacent and nearby land uses.
- The change better meets smart-growth goals of the comprehensive plan than the current zoning.

Con:

- The zoning change was not requested by the property owner.

Staff's analysis indicates that the proposed zoning district would support appropriate development on these properties, and prevent incompatible development better than the existing zoning, and, accordingly, staff finds the proposal reasonable and recommends approval.

Proposal to rezone properties near Caledonia Road and Swannanoa River Road from Institutional District to RM-8 Residential Multi-Family Medium Density District. The owners are Caledonia Apartments LLC and Caledonia Development LLC, and the petitioner is the City of Asheville. The properties are identified as PIN 9648-71-0317 and a portion of PIN 9648-71-3307. Planner coordinating review - Judy Daniel.

Planning & Development Director Judy Daniel oriented the Commission to the site and said that on September 10 of this year, staff presented a Council requested zoning analysis of the properties that are the subject of this rezoning proposal (and other adjoining properties). After the presentation the Council voted to direct staff to pursue a rezoning of these properties. This report is the request for rezoning on two properties from the Institutional zoning district to the RM-8 zoning district. The staff believes that Institutional is not appropriate zoning for any of these properties. Regardless of any other considerations, the Institutional Zone allows a wide range of non-residential uses, many of which could be inappropriate at this location due to access and compatibility issues.

This proposed rezoning to RS-8 will affect the 1.74 acre residual portion of property owned by Caledonia Apartments LLC (PIN: 9648710317) that was the subject of a subdivision along the Finalee Avenue frontage earlier this year (a 50 unit multi-family development was approved on this property in 2012 but later voided by the creation of the subdivided lots); and the majority (3 acres) of a 3.05 acre property owned by Caledonia Development LLC (PIN 9648713307). This recommendation includes the remaining 1.74 acre portion of the parcel on Finalee property (owned by Caledonia Apartments LLC). A small portion of that property (.05 acre) fronts on Swannanoa River Road and is zoned River, and no change to it is proposed.

The two properties that are the subject of this report are quite steep (both over 40% average slopes) but have the advantage of access directly from a lower segment of Caledonia Road and from Swannanoa River Road. Because of that access these two properties are recommended for the RM-8 zoning (rather than the RS-8 single-family zone). That designation will allow development at a reduced density reflecting the steep slopes of these properties, and would eliminate the potential for problematic non-residential uses allowed in the Institutional zone; while still allowing clustered multi-family development potential. The change would substantially impact development potential, reducing the potential density by approximately 50%, but it reflects a more realistic development potential given the site constraints.

As of the date of this report, staff has received no communications from the affected property owner or the public regarding the proposed rezoning.

Pros:

- The change is suitable for the subject area and consistent with other adjacent and nearby land uses.
- The change meets a smart-growth goal of the comprehensive plan better than the current zoning.

Con:

- The zoning change was not requested by the property owner.

Staff's analysis indicates that the proposed zoning district would support appropriate development, and prevent incompatible development better than the existing zoning, and, accordingly, staff finds the proposal to be reasonable and recommends approval.

In response to Ms. Mathews, Ms. Daniel said any time conditional zoning is placed on a property, it will be in perpetuity until the property owner requests a change.

At 8:42 p.m., Chairman Goldstein opened the public hearing.

Mr. Tom Holman, attorney representing Mr. Frank Howington's entities at issue with these rezonings, strongly opposed the proposed rezonings affecting Mr. Howington's remaining properties and urged the Commission to vote against them. Within the last three years, the City's actions (inconsistent with the pending proposals) include (1) Staff recommendation of a 100 unit project what was on a larger parcel; (2) Staff recommendation of an alternative 250 unit project at

these properties; and (3) Staff recommendation of one 50-unit project that was approved and obtained the okay to move forward to construction. Staff, after that, recommended a revised 50-unit project that was revised solely on voluntary revisions by Mr. Howington to address and minimize some of the neighborhood's concerns raised within the last 3 years of these projects. Mr. Howington then voluntarily backed away from the revised 50-unit plan and subdivided a number of the parcels that were owned by Caledonia in a manner that reduced substantially the allowed density for these parcels. All that was done by Mr. Howington, along with RiverLink transfer, voluntarily. In the fact of Mr. Howington's voluntary and good faith accommodations to neighborhood complaints, by doing less than clearly allowed to do, this pending proposal seeks to change the zoning status that has been intact and unchanged for over 30 years, to substantially impair what Mr. Howington can do with the remainder of his property. Adoption of the proposed changes would be wrong, fundamentally unfair and would send a horrible message to property owners and developers who voluntarily do less than lawfully allowed in order to address and resolve neighborhood concerns. Clearly there is no more reason to approve this rezoning than there was when this Commission rejected a similar effort 2 years ago. In fact, substantially less since a lot of the basis given for the concerns for those prior projects have now been largely removed - if not entirely - with the transfer to RiverLink and the subdivision of those parcels immediately along Finalee Avenue into smaller parcels with substantially less allowed density. Among other actions that have been taken that have been inconsistent with what is being proposed now can be found with the initial 100 unit project that was proposed and recommended by staff back in 2010. The findings that staff was required to make, and did make, as part of the recommendations for the approval of that 100 unit project included findings that (1) the proposed use or development of the land will not materially endanger the public health or safety; (2) that the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site, given the proposed site design and mitigation techniques or measures proposed by the applicant; (3) that the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located; (4) that the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City; (5) that the proposed use is appropriately located with respect to transportation facilities with water supply, fire and police protection, waste disposal, and similar facilities; and (6) that the proposed use will not cause undue traffic congestion or create a traffic hazard. Fundamental to the integrity of the City's zoning ordinances is that the rules be applied consistently and fairly to everyone. A careful review of the history of these properties over the last few years leads to the conclusion that that is not happening here. The proposed changes and roughly 50% reduction in the allowed density of most of the remaining parcels are (1) inconsistent with the zoning history at this location; (2) inconsistent with the Comprehensive Plan promoting both increased density and infill development; and (3) inconsistent with City staff and Technical Review Committee's approval of multiple projects involving 50 and 100 units, and inconsistent with the developer's own voluntary actions reducing the density and in part eliminating any development on portions of the properties of which opponents of these projects had been most critical. Despite the absence of support for any of the proposed changes, Mr. Howington would not have opposed the proposal changing the parcels from Institutional to RM-16; however, the proposals before the Commission, which for the most part with the exception of the Kenilworth Inn property, goes substantially further than that in reducing and limiting his rights with respect to this property is something that makes the present proposal unfair, wrong and inconsistent with the City's own development plans and a proposal that should be rejected. He said there are now multiple accesses to these parcels - they do not have to access Finalee Avenue anymore. Only the lower part of Caledonia, there is two access points for those - one at the top of the very lower part of Caledonia and one off of Swannanoa River Road entirely. The Technical Review Committee has assessed that the primary issues been raised with regard to the present proposals, are traffic issues and the slope issues, and have consistently said that those are in compliance as Mr. Howington has proposed.

Mr. Minicozzi said that the Commission has seen Mr. Howington bringing projects through in a piecemeal basis of smaller rezonings. To some extent this carries that same pattern up the street. In his mind it is giving Mr. Howington predictability that meets what Mr. Howington is already doing voluntarily.

Mr. Holman acknowledged that Mr. Howington has subdivided some of the parcels and agreed to develop those for under density levels that were less than was previously allowed. But that doesn't suggest that he was in agreement to a wholesale reduction of all his other property. He added that there are multiple lawsuits and challenges pending here. To try to impute to Mr. Howington his particular intention or design to agree to have all of his property reduced in its density is not consistent with the fact. At a certain point a property owner decides that economically to continue in litigation with respect to certain parcels is not in his best interest ultimately. That could very easily justify the decision to subdivide some of those parcels, limit voluntarily the density of those, while fully retaining the right to maintain the existing even Institutional District with respect to those other parcels.

When Chairman Goldstein asked if Mr. Howington would be agreeable to rezoning his property to RM-16, Mr. Holman said that if the matter before the Commission was to rezone the remaining parcels from Institutional zoning to RM-16, he would not have opposed that.

Mr. Terry Meek, licensed architect and resident on Pickwick Road, and member of the Kenilworth Residents Association, supported staff's recommendations on these rezonings. He said Caledonia Road is about 16-18 feet in width and can't handle a large volume of traffic. It's been said that Mr. Howington voluntarily released the 50-unit apartment project that was proposed but felt sure it was a business decision. He spoke about the appropriateness of density on the balance of the project. He showed a picture which delineated the slope of the site. The least part of the slope was 35% - some are up to 42%. Grade plays an important part in density. This does not fall within the technical requirements of the steep slope ordinance; however, in the spirit of the ordinance there is a determination of units based on the use of a particular piece of property with slopes in excess of 15%. He showed a slope stability index out of the Unified Development Ordinance. He then showed the Commission a debris flow path map of the subject properties. Given the density, based on the slope, he felt that PIN 9648-71-4812 should be 8 units per acre, not 16.

Ms. Teddy Jordan, President of the Kenilworth Residents Association, said that the 100 unit project was turned down and actually 4 of the 7 Unified Development Ordinance conditions were not met. In reference to the recommended rezonings by City staff now, while reserving and preserving all contentions and rights under existing lawsuits and appeals, the Kenilworth Residents Association supports the City's rezoning recommendations and asked for the Commission's support.

Ms. Valerie Hoh, resident on Finalee Avenue, said that this Commission has talked about looking at the big picture of development in the southern end of their neighborhood and just the Kenilworth Inn alone is 90+ apartments. If Mr. Howington is able to put in another 50 units next to it and if it's RM-16 below, he could build another 100 units. Caledonia Road is a dangerous Road and that should be enough for the Commission to support City staff's recommendation.

Ms. Miller Graves, resident on Caledonia Avenue, felt that neither Institutional nor RM-16 zoning is appropriate for the subject properties. She felt this property should be in the steep slope criteria.

At 9:13 p.m., Chairman Goldstein closed the public hearing.

When Mr. Edmonds asked if any current litigation would affect this action, Mr. Holman said that there are a number of civil actions pending in Buncombe County and administrative related appeals and challenges. Every decision that is entered that is adverse to Mr. Howington's

rights, as we feel, is subject to dispute but we have had litigation filed on both sides. Mr. Howington is a well disciplined developer and develops his property very cautiously and consciously over a long period of time. The City will lose substantial revenue over the years because some of these projects have not gone through. With that said, Mr. Howington would like to resolve litigation. He feels strongly that the proposals before the Commission and the scope of the reduction is inappropriate.

When Mr. Edmonds asked if any of the properties being discussed at this meeting is the subject of litigation, Mr. Holman replied no, nor is there anything that he has presently planned with respect to these parcels. But, he wants to retain the rights to the full extent that he can and feels that he should.

At Mr. Edmonds' request, Ms. Daniel explained the difference between the RS-8 zoning and the RM-8 zoning.

Chairman Goldstein's biggest concern is the fairness issue. Many properties all over the City are zoned inappropriately and he felt this is a property right issue. He was concerned about imposing something on a property owner against their will.

Mr. Cannady agreed with Chairman Goldstein. He understood the problems associated with Caledonia Avenue; but he also understood that Mr. Howington wanted to protect his rights.

Ms. Mathews said that there comes to a point where good common sense needs to look at how we shape development and steep slopes is one of those things. If we are also putting danger onto roads or erosion into streams, those are good reasons to step back and tell the property owner they still have some rights, but they will be different. There are tools to modify. There is rationale to what staff is presented that protects a lot of other people as well.

Ms. Carter said there has been four years of fighting and that tells her there is a mismatch of something. If we get the zoning right (which she believes staff has captured) and it does come to development, there will not be that fight.

Mr. Minicozzi sees this as taking a leap on what Mr. Howington has already done voluntarily, since the Commission has been hearing these in a piecemeal basis. He agreed with Chairman Goldstein that the process has a bitter taste to it, but from a context standpoint the process may not be right, but from a map prospective, this seems to make more sense.

Vice-Chair Shriner felt the staff recommendation makes sense to her, but she too didn't like that we are taking away something from the property owner.

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Mathews moved to recommend approval of rezoning properties on Caledonia Road from Institutional District to RM-16 Residential Multi-Family High Density District. This motion was seconded by Vice-Chair Shriner and carried on a 5-2 vote, with Chairman Goldstein and Mr. Cannady voting "no."

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Mathews moved to recommend approval of rezoning properties on Caledonia Road (PIN 9648726180, PIN 9648714686, PIN 9648718648, PIN 9648718624, and the pertinent .16 acre portion of the .34 acre PIN 9648727364) from Institutional District to RS-8 Residential Single-Family High Density District. This motion was seconded by Ms. Carter and carried on a 5-2 vote, with Chairman Goldstein and Mr. Cannady voting "no."

Finding that the request is reasonable and consistent with the Comprehensive Plan and other adopted plans, and based on information provided in the staff report and as stated in the staff recommendation, Ms. Mathews moved to recommend approval of rezoning properties on Caledonia Road and Swannanoa River Road from Institutional District to RM-8 Residential Single-Family Medium Density District. This motion was seconded by Ms. Carter and carried on a 5-2 vote, with Chairman Goldstein and Mr. Cannady voting "no."

(6) Ordinance amending Chapter 7 of the Code of Ordinances regarding the River District Design Review

Riverfront Redevelopment Coordinator Stephanie Monson said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance regarding the River District design review.

Ms. Monson said that this would be to delete sections 7-3-10 (Decision Making Bodies, River District Design Review Committee) and 7-5-18 (Development Review Procedures, River District Design Review) of the UDO in their entirety, and replace with new sections that: (1) Authorize the Asheville Area Riverfront Redevelopment Commission to perform the function of River District Design Review, Major Works; (2) Change the River District Design Review procedure's applicability from River District Zoned properties to a River District Design Review Area; and (3) And further clarify the river district design review process requirements for applicants.

The River District Design Review Committee (RDDRC) was formed in November of 1997 to promote Asheville's riverfront as a vital economic development area for Asheville and western North Carolina and to perform design review for major works projects located within the River District zoned areas. It has been staffed by the Office of Economic Development since March 2013.

In 2009 Asheville City Council chartered a new board -The Asheville Area Riverfront Redevelopment Commission (AARRC)- that serves a similar, yet expanded purpose of promoting riverfront revitalization through explicit partnership with Buncombe County, the Town of Woodfin, RiverLink, the Asheville Area Chamber of Commerce, and the Council of Independent Business Owners. The AARRC charter, though modeled after the Downtown Commission (which performs Downtown Design Review), did not include the River District Design Review function. The AARRC has been staffed by the Office of Economic Development since its creation.

The River District Design Review Committee at their regular meeting on August 28th, 2013, unanimously recommended to the AARRC and City Council that staff pursue changes to the Unified Development Ordinance that would dissolve the RDDRC; maintain river district design review as a development review requirement, re-assign the function of river district design review/major works review to the AARRC; and realign the geography of the river district design review function so that it aligns with the geography of the City's redevelopment efforts, not River District zoning. Since that time:

- The AAARC, at their September 12, 2013, meeting, voiced support for the recommendation and asked staff to move forward with the RDDRC proposal.
- The Planning and Economic Development Committee of Asheville City Council, at their September 17, 2013, meeting, voiced support for staff to continue working on the proposal, and to bring the UDO changes forward for Council consideration when appropriate.
- A joint meeting of the AARRC and RDDRC was held on September 19, 2013, to review staff's proposed UDO wording changes and provide comments. The group approved of the direction of the wording changes and prioritized these comments:
 - Property owners that were not previously required to apply for River District Design Review may be concerned about the City adding another step to their

development review process. Staff should perform an analysis that delineates how many additional parcels this proposal may affect and make the map available to the public.

- Developers should have quick and easy access to the design review application, guidelines, and staff that can inform them about the process- whether online or at the Development Services Center.

Pros:

- Provides consistency for developers, regarding how the City performs (non-historic district) design review in its urbanized areas.
- Streamlines number of boards and commissions, therefore reducing required staff time.
- As a result of expanding the design review area, the community can better accomplish the intended purpose of design review.

Cons:

- May upset property owners that were not previously required to submit for river district design review
- Expansion of design review area may increase number of reviews, thus increasing staff resources needed to perform river district design review.

City staff recommends that the Planning and Zoning Commission approve a recommendation to City Council that deletes existing sections 7-3-10 and 7-5-18 of the UDO and replaces them with new sections as proposed by staff; and that Council adopts a new map for the river district design review area as proposed by staff.

In response to Mr. Cannady, Ms. Monson described the new make-up of the Asheville Area Riverfront Redevelopment Commission.

Ms. Monson, at the request of Mr. Edmonds, reviewed the function of the River District Design Review Subcommittee.

At Vice-Chair Shriner's request, Ms. Monson said that she would provide City staff with the mandatory review, voluntary compliance design guidelines to pass onto the Commissioners.

At 9:49 p.m., Chairman Goldstein opened the public hearing.

Mr. Mike Plemmons, representing the Council of Independent Business Owner, supported the amendment.

At 9:50 p.m., Chairman Goldstein closed the public hearing.

Based on the above findings and the analysis provided in the report, Mr. Minicozzi moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances regarding the River District design review and adoption of a new map for the River District design review area as proposed by staff. This motion was seconded by Chairman Goldstein and carried unanimously on a 7-0 vote.

Other Business

Planning & Development Director Judy Daniel (1) a worksession on Thursday, November 21, 2013, at 11:00 a.m. in the 5th Floor Large Conference Room in the City Hall Building; and (2) the next meeting on December 4, 2013, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

Adjournment

At 9:51 p.m., Ms. Carter moved to adjourn the meeting. This motion as seconded by Vice-Chair Shriner and carried unanimously on a 7-0 vote.